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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

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10 KEVIN JOSEPH HUNTER,

11 Plaintiff,

12 vs.

13 CLARK COUNTY SOCIAL SERVICES, et al.,

14 Defendants.

Case No.: 2:09-cv-2284-RLH-PAL

ORDER

(Motion to Dismiss-#2; Motion to Dismiss
Amended Complaint-#13)

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16 Before the Court is Defendants Clark County Social Services et. al.'s **Motion to**
17 **Dismiss** (#2), filed December 23, 2009.

18 Also before the Court is Defendants' **Motion to Dismiss Amended Complaint**
19 (#13), filed April 15, 2010. The Court has also considered Plaintiff Kevin Joseph Hunter's
20 Opposition (#15), filed May 6, 2010.

21 **BACKGROUND**

22 Plaintiff, who is representing himself in this action, has filed a § 1983 claim against
23 Defendants for violation of his civil rights under the Fourteenth Amendment. Plaintiff alleges the
24 Clark County Social Services and the individual Defendants—Maryann Salman, Anthony Malone,
25 and Dawn Sanchez—violated his due process rights by denying him access to his social services
26 case file and thereby interfering with his ability to appeal the denial of his social services benefits.

1 Plaintiff sues all Defendants in their official capacities. On December 23, Defendants filed a
2 motion to dismiss Plaintiff's complaint, which is now before this Court.

3 On March 5, 2010, Magistrate Judge Leen screened Plaintiff's complaint pursuant
4 to 28 U.S.C. 1915(a) and determined Plaintiff had not stated a viable Fourteenth Amendment
5 claim for two reasons. First, Plaintiff failed to allege that he had a protectible property interest in
6 obtaining possession of his social services case file. Second, Plaintiff failed to allege that
7 Defendants acted pursuant to Clark County custom or policy, as is required when a plaintiff brings
8 claims against state officials in their official capacities. Accordingly, Judge Leen dismissed
9 Plaintiff's complaint and gave Plaintiff thirty days to bring an amended complaint if he believed
10 "the noted deficiencies [could] be corrected." (Dkt. #7, Order 4.)

11 On April 6, Plaintiff filed an amended complaint. On April 15, Defendants moved
12 to dismiss the amended complaint. For the reasons discussed below, the Court denies as moot
13 Defendants' motion to dismiss and grants Defendants' motion to dismiss the amended complaint.

14 DISCUSSION

15 I. Motion to Dismiss

16 Defendants moved to dismiss Plaintiff's lawsuit shortly after it was filed. This
17 motion is now moot because Judge Leen dismissed the complaint under 28 U.S.C. § 1915(a). The
18 Court therefore denies Defendants' motion as moot and considers Plaintiff's amended complaint,
19 which is the operative complaint in this case.

20 II. Motion to Dismiss Amended Complaint

21 The Court grants Defendants' motion to dismiss Plaintiff's amended complaint
22 because Plaintiff has not cured any of the deficiencies that were present in his initial complaint.
23 As noted by Judge Leen, Plaintiff cannot bring a proper Fourteenth Amendment claim if he does
24 not claim to have a protectible property interest in his social services file and if he does not allege
25 that Defendants acted pursuant to a Clark County custom or policy. Like his original complaint,
26 /

1 Plaintiff's amended complaint does not address either one of these issues. Consequently,
2 Plaintiff's amended complaint fails as a matter of law and must be dismissed.

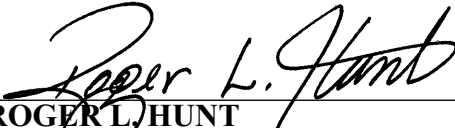
3 **CONCLUSION**

4 Accordingly, and for good cause appearing,
5 IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (#2) is DENIED
6 as moot.

7 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss Amended
8 Complaint (#13) is GRANTED.

9 The Clerk of the Court is ordered to close this case.

10 Dated: May 12, 2010.

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13 **ROGER L. HUNT**
14 **Chief United States District Judge**
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